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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion and
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Agenda item 3

ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY

Scope of the activities and the accountability of armed forces, United Nations civilian police, international civil servants and experts taking part in peace support operations (i.e. all operations of a peacekeeping or peace enforcement nature under a United Nations mandate)

Work in progress submitted by Françoise Hampson in accordance with Sub-Commission decision 2001/105*

1. In its decision 2001/105, the Sub-Commission, recalling its resolution 2000/24 and Commission on Human Rights resolution 2000/68 and taking note of Commission resolution 2001/70 and the background information provided in document E/CN.4/Sub.2/2001/WP.1, decided to entrust Ms. Françoise Hampson with the task of preparing a working paper on the scope of the activities and the accountability of armed forces, United Nations civilian police, international civil servants and experts taking part in peace support operations.

* The document was submitted after the date set by the General Assembly for reasons beyond the control of the secretariat.

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2. The study does not examine the lawfulness of such operations under the Charter of the United Nations.

3. Most of the information needed for the working paper has now been gathered from a variety of sources.

4. The guidance of the Sub-Commission is sought on the following issues:

(a) The operations to be covered - should they be confined to United Nations-mandated operations involving a United Nations force or should they also include (i) United Nations-mandated operations not involving a United Nations force and/or (ii) operations which some argue do not have a United Nations mandate? The view of the author is that the study should include all operations which have a United Nations mandate, whether or not the force is a United Nations force, since the United Nations might be thought to have some responsibility for any operation it mandates, whoever carries it out. Operations which do not appear to have a United Nations mandate should not be included because the United Nations would appear to have no responsibility for the operation;

(b) Should the study examine the discharge of any human rights mandate given to the mission? It is suggested that a distinction should be drawn between acts of individuals and/or contingents which are in conflict with human rights standards and the implementation of a human rights mandate. The only exception would be where individuals and/or national contingents act in conflict with human rights standards whilst engaged in activities in implementation of a human rights mandate (e.g. train local police to engage in activities which would violate human rights standards);

(c) Issues surrounding prostitution and trafficking in women. Resorting to the use of prostitutes does not appear, in and of itself, to be in conflict with human rights standards, whether or not it is in breach of military discipline or other internal rules applicable to a force. Where the prostitute is not acting voluntarily, whether or not as a result of trafficking, the individual client may be knowingly having sexual relations with a person who is being held in a form of slavery or forced labour. In such a situation, it might be possible to argue that the individual client and the contingent to which he belongs do have some legal responsibility for exploiting a situation for which they may not be responsible. Clearly, any involvement in organizing women to provide sexual services against their will or in trafficking would entail the responsibility of the individual and possibly also of the contingent. There may also be a positive responsibility on contingents exercising control within an area to protect women from the risk of such activities. That would require them to monitor brothels and activities associated with prostitution to ensure that women are only involved voluntarily. That raises a broader question about the scope of the responsibility of contingents. To what extent do they have a responsibility to protect those under their effective control from the risk of serious human rights violations at the hands of third parties? It is submitted that involvement in organizing women to provide sexual services against their will or in trafficking is within the scope of the study. A good case can be made for considering the responsibility of a force or contingent where individual members use the services of prostitutes where they knew or ought to have known that they were

acting against their will. Guidance would be appreciated as to whether the study should also include an examination of the responsibility of mission personnel to protect women from such risks at the hands of third parties and, if so, whether the study should also include the positive obligation to protect the rights of those under the effective control of international personnel, even where the risk comes from third parties.

5. The working paper will be drafted in the light of the guidance provided by the Sub-Commission and will be submitted at the next session.